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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/601,283	09/15/2000	Daniel Meilhon	6219-0012	9760

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EXAMINER

CHEN, VIVIAN

ART UNIT	PAPER NUMBER
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1773

DATE MAILED: 10/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/601,283

Applicant(s)

MEILHON, DANIEL

Examiner

Vivian Chen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 1-17 and 31-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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## **DETAILED ACTION**

1. The finality of the rejections of Paper No. 17 (mailed 6/25/03) is hereby withdrawn in favor of the new grounds of rejection, based partially on newly discovered prior art. Any inconvenience to the Applicant is regretted.

### ***Claim Objections***

2. Claim 21 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

### ***Claim Rejections - 35 USC § 112***

3. The rejection under 35 U.S.C. 112, second paragraph, in paragraph 2 of the previous Office Action has been withdrawn in view of Applicant's arguments.

### ***Claim Rejections - 35 USC § 103***

4. Claims 18-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over WINTER (US 4,705,707) in view of PETKE ET AL (US 4,554,303).

WINTER '707 discloses a symmetrical five layer film having a CBABC structure and suitable for wrapping and packaging applications, wherein layer "A" is polyethylene and layer "C" is a heat-sealable copolyester, wherein layer "A" is 30-90 wt% of the film, and layer "C"

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comprises 5-40 wt% of the film, the film having a typical total thickness of 1.9 mil (Figure 2; lines 44-53, col. 4; lines 55-68, col. 6; lines 16-30, col. 9; lines 45-50, col. 10; line 65, col. 16 to line 9, col. 17; Example 7) as recited in claims 18-24, 30. The copolyester layers optionally contain slip and antiblocking agents (lines 50-55, col. 6) as recited in claim 28. However, the reference does not explicitly disclose the recited copolyester.

PETKE ET AL '303 discloses that it is well known in the art to use semi-crystalline or amorphous copolyesters comprising 40-100 mol% ethylene terephthalate and up to 60 mol% of another diacid such as isophthalic acid and up to 60 mol% of another diol such as cyclohexane dimethanol as heat seal layers for packaging films (lines 14-15, col. 1; line 57, col. 2 to line 68, col. 3) as recited in claims 18, 25-27 in order to form articles with durable heat seals.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use known heat-sealable copolyester resins as disclosed in PETKE ET AL '303 as the outer layers of the WINTER '707 film in order to obtain durable, rupture resistant packaging and wrapping materials. One of ordinary skill in the art would have applied conventional metallic or print layers to the film (claim 29) in order to obtain specific decorative effects and/or convey package information. One of ordinary skill in the art would reasonably believe that the disclosed films are capable of substantially retaining a shape (i.e., substantially retaining a fold, crease, etc.) under certain conditions; therefore the Examiner has basis for shifting the burden of proof to applicant as in *In re Fitzgerald et al.*, 205 USPQ 594.

5. Claims 18-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over WINTER (US 4,716,061) in view of PETKE ET AL (US 4,554,303).

WINTER '061 discloses a symmetrical five layer film having a CBABC structure and suitable for wrapping and packaging applications, wherein layer "A" is polypropylene (co)polymer and layer "C" is a copolyester, wherein layer "A" is 30-90 wt% of the film, and layer "C" comprises 5-40 wt% of the film, the film having a typical total thickness of 1.9 mil (Figure 2; lines 5-18, col. 6; lines 45-68, col. 6; lines 9-27, col. 9; lines 37-48, col. 15; Example 6) as recited in claims 18-22, 24, 30. The copolyester layers optionally contain slip and antiblocking agents (lines 40-45, col. 6) as recited in claim 28. However, the reference does not explicitly disclose the recited copolyester.

PETKE ET AL '303 discloses that it is well known in the art to use semi-crystalline or amorphous copolyesters comprising 40-100 mol% ethylene terephthalate and up to 60 mol% of another diacid such as isophthalic acid and up to 60 mol% of another diol such as cyclohexane dimethanol as heat seal layers for packaging films (lines 14-15, col. 1; line 57, col. 2 to line 68, col. 3) as recited in claims 18, 25-27 in order to form articles with durable heat seals.

It would have been obvious to a person of ordinary skill in the art at the time the It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use known heat-sealable copolyester resins as disclosed in PETKE ET AL '303 in the outer layers of the WINTER '061 film in order to obtain durable, rupture resistant packaging and wrapping materials. It also would have been obvious to use commercially available ethylene-propylene copolymers (claim 23) for the core layer depending on the specific mechanical, chemical, or other physical properties desired for a given end use. One of ordinary skill in the art would have applied conventional metallic or print layers to the film (claim 29) in order to obtain specific decorative effects and/or convey package information. One of ordinary skill in the art

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would reasonably believe that the disclosed films are capable of substantially retaining a shape (i.e., substantially retaining a fold, crease, etc.) under certain conditions; therefore the Examiner has basis for shifting the burden of proof to applicant as in *In re Fitzgerald et al.*, 205 USPQ 594.

6. Claims 18-24, 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over WINTER (US 4,705,707) in view of PETKE ET AL (US 4,352,925).

WINTER '707 discloses a symmetrical five layer film having a CBABC structure and suitable for wrapping and packaging applications, wherein layer "A" is polyethylene and layer "C" is a heat-sealable copolyester, wherein layer "A" is 30-90 wt% of the film, and layer "C" comprises 5-40 wt% of the film, the film having a typical total thickness of 1.9 mil (Figure 2; lines 44-53, col. 4; lines 55-68, col. 6; lines 16-30, col. 9; lines 45-50, col. 10; line 65, col. 16 to line 9, col. 17; Example 7) as recited in claims 18-24, 30. The copolyester layers optionally contain slip and antiblocking agents (lines 50-55, col. 6) as recited in claim 28. An illustrative example of a suitable copolyester is KODABOND 5116 which is derived from terephthalic acid, ethylene glycol, and diethylene glycol (Example 1).

PETKE ET AL '925 discloses that it is well known in the art to use amorphous copolyesters comprising derived from terephthalic acid, ethylene glycol, and diethylene glycol as heat-resistant heat seal layers for laminates (lines 21-30, col. 2; lines 20-28, col. 3; Example 1) as recited in claims 18 in order to form articles with durable heat seals.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use known, commercially available heat-sealable copolyester resins as disclosed in PETKE ET AL '925 as the outer layers of the WINTER '707 film in order to obtain

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durable, rupture resistant packaging and wrapping materials. One of ordinary skill in the art would have applied conventional metallic or print layers to the film (claim 29) in order to obtain specific decorative effects and/or convey package information. One of ordinary skill in the art would reasonably believe that the disclosed films are capable of substantially retaining a shape (i.e., substantially retaining a fold, crease, etc.) under certain conditions; therefore the Examiner has basis for shifting the burden of proof to applicant as in *In re Fitzgerald et al.*, 205 USPQ 594.

7. Claims 18-24, 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over WINTER (US 4,716,061) in view of PETKE ET AL (US 4,352,925).

WINTER '061 discloses a symmetrical five layer film having a CBABC structure and suitable for wrapping and packaging applications, wherein layer "A" is polypropylene (co)polymer and layer "C" is a copolyester, wherein layer "A" is 30-90 wt% of the film, and layer "C" comprises 5-40 wt% of the film, the film having a typical total thickness of 1.9 mil (Figure 2; lines 5-18, col. 6; lines 45-68, col. 6; lines 9-27, col. 9; lines 37-48, col. 15; Example 6) as recited in claims 18-22, 24, 30. The copolyester layers optionally contain slip and antiblocking agents (lines 40-45, col. 6) as recited in claim 28. An illustrative example of a suitable copolyester is KODABOND 5116 which is derived from terephthalic acid, ethylene glycol, and diethylene glycol (Example 1).

PETKE ET AL '925 discloses that it is well known in the art to use amorphous copolyesters comprising derived from terephthalic acid, ethylene glycol, and diethylene glycol as heat-resistant heat seal layers for laminates (lines 21-30, col. 2; lines 20-28, col. 3; Example 1) as recited in claims 18 in order to form articles with durable heat seals.

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It would have been obvious to a person of ordinary skill in the art at the time the It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use known, commercially available heat-sealable copolyester resins as disclosed in PETKE ET AL '925 in the outer layers of the WINTER '061 film in order to obtain durable, rupture resistant packaging and wrapping materials. It also would have been obvious to use commercially available ethylene-propylene copolymers (claim 23) for the core layer depending on the specific mechanical, chemical, or other physical properties desired for a given end use. One of ordinary skill in the art would have applied conventional metallic or print layers to the film (claim 29) in order to obtain specific decorative effects and/or convey package information. One of ordinary skill in the art would reasonably believe that the disclosed films are capable of substantially retaining a shape (i.e., substantially retaining a fold, crease, etc.) under certain conditions; therefore the Examiner has basis for shifting the burden of proof to applicant as in In re Fitzgerald et al., 205 USPQ 594.

### *Response to Arguments*

8. Applicant's arguments filed 6/25/2003 have been fully considered but they are not persuasive.

(A) Applicant's arguments with respect to BRADT ET AL are moot in view of the new ground(s) of rejection.

(B) Applicant argues that the WINTER films are not for sealing, but for wrapping objects without sealing. First, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e.,



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wrapping without sealing) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Furthermore, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Since the WINTER references explicitly disclose that the disclosed films are suitable for use as cheese wrap or meat packaging, the references clearly imply that the disclosed films are capable of performing the intended use (i.e., wrapping objects). Also, there is no probative evidence that the films of WINTER are totally incapable of being wrapped, folded, or otherwise secured around an object without the use of adhesive or sealing.

### *Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure

ANDERSON, II (US 5,324,427) discloses conventional copolyesters used as sealing layers for polymeric films.

COLUMBUS (US 4,957,582) discloses that KODABOND 5116 is a copolyester as described in PETKE ET AL '925.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vivian Chen whose telephone number is (703) 305-3551. The examiner can normally be reached on Monday through Thursday from 8:30 AM to 6 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau, can be reached on (703) 308-2367. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

October 7, 2003



Vivian Chen  
Primary Examiner  
Art Unit 1773